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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-196285

DATE: October 17, 1979

MATTER OF: R.B.S., Inc.

[Request for Contract Price Adjustment]

DIGEST:

Dispute regarding equitable price adjustment must be pursued under contract's "Disputes" clause procedure and thus is not for consideration by GAO.

DLK 86

DLG 5032669

R.B.S., Inc., requests our assistance in securing a price adjustment under contract No. DSA-76-D-0164 with the Defense Fuel Supply Center (DFSC). The adjustment was first requested of DFSC by R.B.S. approximately two years ago pursuant to clauses J28 and J29 of the contract, which are entitled "Economic Price Adjustment" and "Economic Price Adjustment/Federal Coal Mine Health and Safety Act of 1969," respectively. The clauses provide for price adjustment, where certain conditions are met, within a "reasonable time" after a request by the contractor; R.B.S. is concerned that a "reasonable time" has passed without any agreement between the parties.

However, each of the cited clauses also provides that the failure of the parties to agree to an adjustment "shall be deemed a dispute concerning a question of fact within the meaning of the clause of this contract entitled 'Disputes'". Although it is not clear from the record presented by R.B.S. whether the firm has as yet formally proceeded under the contract's "Disputes" clause, it is well-established that both the contractor and the Government are bound to follow and exhaust the administrative procedure set out therein for the resolution of disputes, see Harry C. Partridge, Jr. & Sons, Inc., B-191808, May 11, 1978, 78-1 CPD 366; that procedure provides for a decision by the contracting officer, with the contractor having the right of appeal from the decision to the head of the agency concerned.

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Furthermore, it should be noted that as a result of the United States Supreme Court's decision in S&E Contractors, Inc. v. United States, 406 U.S. 1 (1972), our Office no longer reviews decisions rendered under the "Disputes" clause absent a showing of fraud or bad faith. ✓

The matter is dismissed.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel